

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jul 28, 2016

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MARIANO CARRANZA and ELISEO
MARTINEZ, individually and on behalf
of all others similarly situated

Plaintiff,

v.

DOVEX FRUIT COMPANY

Defendant.

No. 1:16-CV-054-SMJ

**STIPULATED PROTECTIVE
ORDER REGARDING HANDLING
OF CONFIDENTIAL MATERIAL**

Before the Court, without oral argument, are the parties' Stipulated Protective Order regarding handling of confidential material, ECF No. 16-1. The Court hereby GRANTS said Stipulated Protective Order.

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, Plaintiffs and Defendant and their respective counsel (collectively the "parties") hereby stipulate to and petition the Court to enter the following Stipulated

1 Protective Order. This agreement does not confer blanket protection on all
2 disclosures or responses to discovery. Instead, the protection it affords from public
3 disclosure and use extends only to the limited information or items that are entitled
4 to confidential treatment under the applicable legal principles, and it does not
5 presumptively entitle parties to file confidential information under seal.

6 2. “CONFIDENTIAL” MATERIAL

7 “Confidential” material shall include the following documents and tangible
8 things, and information related thereto, produced or otherwise exchanged: (1)
9 personal information about current and former employees of Defendant, including
10 Plaintiffs and class members (e.g., Social Security numbers, birth dates, personal
11 contact information, personal performance and evaluation information, personal
12 disciplinary information, personal financial information, and personal medical
13 information); and (2) personal, medical, financial or business data about Plaintiffs
14 and class members, members of their families or other individuals that is not
15 generally available to the public and/or other information expressly designated as
16 “CONFIDENTIAL MATERIAL” by Plaintiffs.

17 3. SCOPE

18 The protections conferred by this agreement cover not only confidential
19 material (as defined above), but also (1) any information copied or extracted from
20 confidential material; (2) all copies, excerpts, summaries, or compilations of

1 confidential material; (3) written discovery or informal discovery that contains
2 confidential information; and (4) any testimony, conversations, or presentations by
3 parties or their counsel that might reveal confidential material. However, the
4 protections conferred by this agreement do not cover information that is in the
5 public domain or becomes part of the public domain through trial or otherwise.

6 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

7 4.1 Basic Principles. A receiving party may use confidential material that is
8 disclosed or produced by another party or by a non-party in connection with this
9 case only for prosecuting, defending, or attempting to settle this litigation.
10 Confidential material may be disclosed only to the categories of persons and under
11 the conditions described in this agreement. Confidential material must be stored and
12 maintained by a receiving party at a location and in a secure manner that ensures
13 that access is limited to the persons authorized under this agreement.

14 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
15 otherwise ordered by the Court or permitted in writing by the designating party, a
16 receiving party may disclose any confidential material only to:

17 (a) the receiving party's counsel of record in this action, as well as employees
18 of counsel to whom it is reasonably necessary to disclose the information for this
19 litigation;

1 (b) the officers, directors, and employees (including in house counsel) of the
2 receiving party to whom disclosure is reasonably necessary for this litigation;

3 (c) experts and consultants to whom disclosure is reasonably necessary for
4 this litigation and who have signed the “Acknowledgment and Agreement to Be
5 Bound” (Exhibit A);

6 (d) the court, court personnel, and court reporters and their staff;

7 (e) copy or imaging services retained by counsel to assist in the duplication
8 of confidential material, provided that counsel for the party retaining the copy or
9 imaging service instructs the service not to disclose any confidential material to
10 third parties and to immediately return all originals and copies of any confidential
11 material;

12 (f) during their depositions, witnesses in this action to whom disclosure is
13 reasonably necessary. Pages of transcribed deposition testimony or exhibits to
14 depositions that reveal confidential material must be separately bound by the court
15 reporter and may not be disclosed to anyone except as permitted under this
16 agreement.

17 (g) the author or recipient of a document containing the information or a
18 custodian or other person who otherwise possessed or knew the information.

19 4.3 Filing Confidential Material. Before filing confidential material or
20

1 “excerpting or quoting” such material in court filings, the filing party shall confer
2 with the designating party to determine whether the designating party will remove
3 the confidential designation, whether the document can be redacted, or whether a
4 motion to seal or stipulation and proposed order is warranted.

5 5. DESIGNATING PROTECTED MATERIAL

6 5.1 Exercise of Restraint and Care in Designating Material for Protection.

7 Each party or non-party that designates information or items for protection
8 under this agreement must take care to limit any such designation to specific
9 material that qualifies under the appropriate standards. The designating party must
10 designate for protection only those parts of material, documents, items, or oral or
11 written communications that qualify, so that other portions of the material,
12 documents, items, or communications for which protection is not warranted are not
13 swept unjustifiably within the ambit of this agreement.

14 Mass, indiscriminate, or routinized designations are prohibited.

15 If it comes to a designating party’s attention that information or items that it
16 designated for protection do not qualify for protection, the designating party must
17 promptly notify all other parties that it is withdrawing the mistaken designation.

18 5.2 Manner and Timing of Designations. Except as otherwise provided in this
19 agreement, or as otherwise stipulated or ordered, disclosure or discovery material
20

1 that qualifies for protection under this agreement must be clearly so designated
2 before or when the material is disclosed or produced.

3 (a) Information in documentary form: (e.g., paper or electronic documents
4 and deposition exhibits, but excluding transcripts of depositions or other pretrial or
5 trial proceedings), the designating party must affix the word “CONFIDENTIAL”
6 to each page that contains confidential material. If only a portion or portions of the
7 material on a page qualifies for protection, the producing party also must clearly
8 identify the protected portion(s) (e.g., by making appropriate markings in the
9 margins). Native format document production will be designated confidential by
10 adding the word “CONFIDENTIAL” to the file name of the native format document
11 produced, or by affixing the word “CONFIDENTIAL” to the label of the media on
12 which the native format documents are produced as per Section 5.2(c) below.

13 (b) Testimony given in deposition or in other pretrial or trial proceedings: the
14 parties must identify on the record, during the deposition, hearing, or other
15 proceeding, all protected testimony, without prejudice to their right to so designate
16 other testimony after reviewing the transcript. Any party or non-party may, within
17 fifteen (15) days after receiving a deposition transcript, designate portions of the
18 transcript, or exhibits thereto, as confidential.

19 (c) Other tangible items: the producing party must affix in a prominent place
20 on the exterior of the container or containers in which the information or item is

1 stored the word "CONFIDENTIAL." If only a portion or portions of the information
2 or item warrant protection, the producing party, to the extent practicable, shall
3 identify the protected portion(s).

4 (d) Written discovery: Written discovery may be designated confidential by
5 affixing the word "CONFIDENTIAL" to each page of the discovery response that
6 contains confidential information.

7 (e) All confidential information not reduced to documentary or tangible form
8 or which cannot be conveniently designated as set forth above, shall be designated
9 by the producing party informing the receiving party of the designation in writing.

10 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
11 failure to designate qualified information or items does not, standing alone, waive
12 the designating party's right to secure protection under this agreement for such
13 material. Upon timely correction of a designation, the receiving party must make
14 reasonable efforts to ensure that the material is treated in accordance with the
15 provisions of this agreement.

16 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

17 6.1 Timing of Challenges. Any party or non-party may challenge a
18 designation of confidentiality at any time. Unless a prompt challenge to a
19 designating party's confidentiality designation is necessary to avoid foreseeable,
20 substantial unfairness, unnecessary economic burdens, or a significant disruption or

1 delay of the litigation, a party does not waive its right to challenge a confidentiality
2 designation by electing not to mount a challenge promptly after the original
3 designation is disclosed.

4 6.2 Meet and Confer. The parties must make every attempt to resolve any
5 dispute regarding confidential designations without court involvement. Any motion
6 regarding confidential designations or for a protective order must include a
7 certification, in the motion or in a declaration or affidavit, that the movant has
8 engaged in a good faith meet and confer conference with other affected parties in
9 an effort to resolve the dispute without court action. The certification must list the
10 date, manner, and participants to the conference. A good faith effort to confer
11 requires a face-to-face meeting or a telephone conference.

12 6.3 Judicial Intervention. If the parties cannot resolve a challenge without
13 court intervention, the designating party may file and serve a motion to retain
14 confidentiality. The burden of persuasion in any such motion shall be on the
15 designating party. Frivolous challenges, and those made for an improper purpose
16 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may
17 expose the challenging party to sanctions. All parties shall continue to maintain the
18 material in question as confidential until the court rules on the challenge.

19 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED
20 PRODUCED IN OTHER LITIGATION

1 If a party is served with a subpoena or a court order issued in other litigation
2 that compels disclosure of any information or items designated in this action as
3 “CONFIDENTIAL,” that party must:

4 (a) promptly notify the designating party in writing and include a copy of the
5 subpoena or court order;

6 (b) promptly notify in writing the party who caused the subpoena or order to
7 issue in the other litigation that some or all of the material covered by the subpoena
8 or order is subject to this agreement. Such notification shall include a copy of this
9 agreement; and

10 (c) cooperate with respect to all reasonable procedures sought to be pursued
11 by the designating party whose confidential material may be affected.

12 **8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

13 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
14 confidential material to any person or in any circumstance not authorized under this
15 agreement, the receiving party must immediately (a) notify in writing the
16 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve
17 all unauthorized copies of the protected material, (c) inform the person or persons
18 to whom unauthorized disclosures were made of all the terms of this agreement, and
19 (d) request that such person or persons execute the “Acknowledgment and
20 Agreement to Be Bound” that is attached hereto as Exhibit A.

1 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
2 PROTECTED MATERIAL

3 9.1 When a producing party gives notice to receiving parties that certain
4 inadvertently produced material is subject to a claim of privilege or other protection,
5 the obligations of the receiving parties are those set forth in Federal Rule of Civil
6 Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure
7 may be established in an e-discovery order or agreement that provides for
8 production without prior privilege review.

9 9.2 Pursuant to Fed. R. Evid. 502(d), inadvertent production of documents
10 subject to work-product immunity, the attorney-client privilege, or other legal
11 privilege protecting information from discovery shall not constitute a waiver of the
12 immunity or privilege.

13 The confidentiality obligations imposed by this agreement shall remain in
14 effect until a designating party agrees otherwise in writing or a court orders
15 otherwise.

16 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD. TERRELL
17 MARSHALL LAW GROUP PLLC

18 By: /s/ Marc C. Cote, WSBA #39824
19 Toby J. Marshall, WSBA #32726
20 Marc C. Cote, WSBA #39824
 Attorneys for Plaintiffs and Proposed Class
 936 North 34th Street, Suite 300
 Seattle, Washington 98103-8869

1 Telephone: (206) 816-6603
Facsimile: (206) 319-5450
2 Email: tmarshall@terrellmarshall.com
Email: mcote@terrellmarshall.com

3 JEFFERS DANIELSON SONN & AYLWARD PS

4 By: /s/ Sally F. White, WSBA #49457

5 Clay Gatens, WSBA #34102
Sally F. White, WSBA #49457
6 *Attorneys for Defendant*
2600 Chester-Kimm Road
7 Wenatchee, Washington 98801
Telephone: (509) 662-3685
8 Facsimile: (509) 662-2452
Email: clayg@jdsalaw.com
9 Email: sallyw@jdsalaw.com

10 //

11 //

12 //

13 //

14 //

15

16

17

18

19

20

1
2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this Order and
3 provide copies to all counsel.

4 **DATED** this 28th day of July 2016.


5 
6 SALVADOR MENDEZ, JR.
7 United States District Judge
8
9
10
11
12
13
14
15
16
17
18
19
20

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of perjury that
I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Eastern District of Washington on
[date] in the case of _____ [insert formal name of the case and the
number and initials assigned to it by the court]. I agree to comply with and to be
bound by all the terms of this Stipulated Protective Order and I understand and
acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in
any manner any information or item that is subject to this Stipulated Protective
Order to any person or entity except in strict compliance with the provisions of this
Order.

I further agree to submit to the jurisdiction of the United States District Court
for the Eastern District of Washington for the purpose of enforcing the terms of this
Stipulated Protective Order, even if such enforcement proceedings occur after
termination of this action.

//

//

1 Date: _____

2 City and State where sworn and signed: _____

3 Printed name: _____

4 Signature: _____